

“(2) apply with respect to costs of compensation incurred after January 1, 1998, under covered contracts entered into before, on, or after the date of the enactment of this Act.”

REGULATIONS

Section 808(d) of Pub. L. 105-85 provided that: “Regulations implementing the amendments made by this section [see Effective Date note set out above] shall be published in the Federal Register not later than the effective date of the amendments under subsection (e) [see Effective Date note set out above].”

EXCLUSIVE APPLICABILITY OF PROVISIONS LIMITING ALLOWABILITY OF COMPENSATION FOR CERTAIN CONTRACTOR PERSONNEL

Section 808(f) of Pub. L. 105-85 provided that: “Notwithstanding any other provision of law, no other limitation in law on the allowability of costs of compensation of senior executives under covered contracts shall apply to such costs of compensation incurred after January 1, 1998.”

DEFINITIONS FOR PURPOSES OF SECTION 808 OF PUB. L. 105-85

Section 808(g) of Pub. L. 105-85, as amended by Pub. L. 105-261, div. A, title VIII, §804(c)(2), Oct. 17, 1998, 112 Stat. 2083, provided that: “In this section [enacting this section, amending section 256 of this title and section 2324 of Title 10, Armed Forces, and enacting provisions set out as notes under this section]:

“(1) The term ‘covered contract’ has the meaning given such term in section 2324(l) of title 10, United States Code, and section 306(l) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256(l)).

“(2) The terms ‘compensation’ and ‘senior executives’ have the meanings given such terms in section 2324(l) of title 10, United States Code, and section 306(m) of the Federal Property and Administrative Services Act of 1949.”

§ 436. Protection of constitutional rights of contractors

(a) Prohibition

A contractor may not be required, as a condition for entering into a contract with the Federal Government, to waive any right under the Constitution for any purpose related to Chemical Weapons Convention Implementation Act of 1997 [22 U.S.C. 6701 et seq.] or the Chemical Weapons Convention (as defined in section 3 of such Act [22 U.S.C. 6701]).

(b) Construction

Nothing in subsection (a) of this section shall be construed to prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections for the purpose of ensuring that the contractor is performing the contract in accordance with the provisions of the contract.

(Pub. L. 93-400, § 40, formerly § 39, as added Pub. L. 105-277, div. I, title III, §308(a), Oct. 21, 1998, 112 Stat. 2681-879; renumbered § 40, Pub. L. 108-136, div. A, title XIV, §1431(d)(2), Nov. 24, 2003, 117 Stat. 1672.)

REFERENCES IN TEXT

The Chemical Weapons Convention Implementation Act of 1997, referred to in subsec. (a), probably means the Chemical Weapons Convention Implementation Act of 1998, which is div. I of Pub. L. 105-277, Oct. 21, 1998, 112 Stat. 2681-856, and is classified principally to chapter 75 (§ 6701 et seq.) of Title 22, Foreign Relations and

Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 6701 of Title 22 and Tables.

§ 437. Incentives for efficient performance of services contracts

(a) Incentive for use of performance-based services contracts

A performance-based contract for the procurement of services entered into by an executive agency or a performance-based task order for services issued by an executive agency may be treated as a contract for the procurement of commercial items if—

(1) the value of the contract or task order is estimated not to exceed \$25,000,000;

(2) the contract or task order sets forth specifically each task to be performed and, for each task—

(A) defines the task in measurable, mission-related terms;

(B) identifies the specific end products or output to be achieved; and

(C) contains firm, fixed prices for specific tasks to be performed or outcomes to be achieved; and

(3) the source of the services provides similar services to the general public under terms and conditions similar to those offered to the Federal Government.

(b) Regulations

The regulations implementing this section shall require agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The data may be collected using the Federal Procurement Data System or other reporting mechanism.

(c) Report

Not later than two years after November 24, 2003, the Director of the Office of Management and Budget shall prepare and submit to the Committees on Governmental Affairs and on Armed Services of the Senate and the Committees on Government Reform and on Armed Services of the House of Representatives a report on the contracts or task orders treated as contracts for commercial items using the authority of this section. The report shall include data on the use of such authority both government-wide and for each department and agency.

(d) Expiration

The authority under this section shall expire 10 years after November 24, 2003.

(Pub. L. 93-400, § 41, as added Pub. L. 108-136, div. A, title XIV, §1431(a), Nov. 24, 2003, 117 Stat. 1671.)

§ 438. Civilian Board of Contract Appeals

(a) Board established

There is established in the General Services Administration a board of contract appeals to be known as the Civilian Board of Contract Appeals (in this section referred to as the “Civilian Board”).